

REMARKS

There was a requirement for restriction in this case in response to which applicant elected Claims 1 –20 for immediate prosecution. Although the requirement for restriction has been traversed, in order to facilitate prosecution applicant has now cancelled Claims 21 – 40, subject to applicant's right to present them in a divisional application.

Claims 1 – 20 were provisionally rejected pursuant to 35 U.S.C. Section 101 as claiming the same subject matter as the corresponding claims of co-pending continuation-in-part of the present application, namely application serial number 10/348,241, filed on January 21, 2003.

Claims 1 – 20 were also provisionally rejected pursuant to the judicially created doctrine of double patenting over Claims 5, 11 and 13 –16 of copending application 10/348,241.

There was no other ground of rejection of Claims 1 – 20.

Simultaneously with the filing of this Amendment and Response applicant also files a Preliminary Amendment in co-pending application serial number 10/348,241. In the Preliminary Amendment of the co-pending case applicant amends the claims as applicable. Specifically Claims 1, 10, 11, 12, 13, 17, 18 and 20 of the copending application were amended and Claim 5 of the copending application was cancelled. The amendment made in the copending case identifies the pharmaceutically acceptable surfactant only as POE(20) sorbitan monooleate, and does not recite polyethoxylated castor oil thereby obviating the statutory ground for the provisional double patenting rejection. A copy of the Preliminary Amendment filed in the copending case is enclosed with this Amendment and Response.

A Terminal Disclaimer of this application over any patent issuing from copending application serial number 10/348,241, filed on January 21, 2003 is also filed herewith, together with the required fee thereby obviating the judicially created ground for the provisional double patenting rejection.

In light of the foregoing Claims 1 – 20 of the present application are in *prima facie* allowable condition, and their early allowance is respectfully solicited.

In the event the Examiner is of the opinion that a telephone conference with the undersigned attorney would materially facilitate the final disposition of this case, he is respectfully requested to telephone the undersigned attorney at the below listed telephone number.

Respectfully submitted

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